S.B.Civil Second Appeal No.415/2004.

Swaroop Gehlot.

vs.

M/s. Sasta Stationery Bhandar & ors.

Date : 29.3.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.N Trivedi for Mr.SN Trivedi, for the appellant.

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Heard learned counsel for the appellant.

The only ground raised by the appellant is admittedly the notice issued by the court under Order 37 Rule 3(4) CPC was not served on the address given on the notice and particularly in the present case, in the notice, the address of the defendant was given of his residence but admittedly in the summon, there is a report that the summon was served on the brother of the defendant that too at the address of the shop.

According to learned counsel for the appellant, Order 37 Rule 3(2) CPC, it is provided that unless otherwise ordered, all summons, notices and other judicial processes required to be served on the

defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

Learned counsel for the appellant sought to interpret this provision as the only provision for service of summons in a suit under Order 37 CPC and ruled out the possibility of service of summon on the adult member of the family.

Two courts below concurrently held that the defendant's brother himself disclosed that he is brother of the defendant and residing with him and hence, treated the service to be proper. I do not find any illegality in the judgments and decrees passed by the two courts below.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya